

MEMORANDUM

TO: James K. Robinson
Assistant Attorney General
Criminal Division

FROM: [REDACTED] [REDACTED]

Re: Independent Counsel Matter: Al Gore, Jr.

Attny Name

I have reviewed the Public Integrity memorandum we received today on the Independent Counsel matter concerning the Vice President. I have also spoken with Chuck La Bella and the agents who worked on the investigation. Although we have had limited time to consider the matter, we have the following immediate observations:

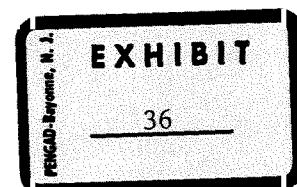
1. The Section 1001 question as set forth in the memorandum (p. 18) turns on whether the Vice President believed the media fund was financed with soft money and whether he believed the hard money donation limit was \$2,000. The first question however is more properly whether he believed the media fund was financed exclusively with soft money. This is not simply a semantical difference since there is no doubt that the media fund was financed with soft money and that he knew it to be so. But whether there was a hard money component is the issue.

2. Brad Marshall of the DNC has been interviewed since the draft was written. His recollection is the same as Leon Panetta's i.e., that the 65/35 split was discussed at the November 21 meeting in the context of the media fund. In fact the statement was made by him. In response to a question, he said something to the effect that on the spending side of the media fund, we are averaging 65% soft and 35% hard.

Thus, we now have Panetta, Marshall and the contemporaneous Strauss notes (with quotation marks suggesting direct statements) all indicating that this topic was raised. On the other side is a group of people who basically "don't recall". This is a classic white collar scenario. Yet the memorandum gives more credence to the "don't recalls" than to the explicit memories. Certainly, a lineup like this (although at the time the memo was written Brad Marshall had not been interviewed) warrants additional inquiry. Some of those relied on e.g., Rosen, have their own credibility problems. (The La Bella Report makes reference to some behavior by Marvin Rosen that is, at the very least, quite questionable.) As for Strauss, the memorandum seems to rely more on his faulty recollection than on his contemporaneous notes.

3. The memorandum does not reference the Vice President's press conference wherein he made a statement to the effect that the phonecalls were designed to solicit money for the campaign. That statement stands in stark contrast to his later comments when interviewed for this investigation. And in placing all this in context, it has to be remembered that the phonecalls were made with a Clinton/Gore credit card. That suggests that it was indeed campaign related.

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4. The agents' notes and recollections of various interviews differs in some important respects from the memorandum. This is most pronounced as to Leon Panetta, who the agents view as a very credible witness, but who is pictured in the memorandum as having an "evolving memory" (p.21) and therefore lacking all credibility. To give just a few examples of the disparity between the agents and the memo:

a. The memo (p. 11) says Panetta's "impression" was that the Vice President was following the hard money discussion. The agents' notes reflect that Panetta said the Vice President was listening attentively.

b. Page 10, fn. 11 suggests that the Media Fund was not an item in the DNC budget during the Spring and Summer of 1995. However Watson recalled the agenda of the June 8, 1995 meeting included the Media Fund.

c. Page 11, fn. 12 says that Panetta may have contradicted himself. The agents notes do not support this. Panetta recalled the general topic discussed though not the specific details.

d. Page 12: The memo suggests that Rosen recalled the focus of the fundraising proposals presented to the President and Vice President during the November meeting was on raising soft money. The agents' notes indicate that Rosen had no recall whether the events were intended to raise soft or hard money.

e. Page 14, n. 15: The footnote concludes that Panetta, among others, did not understand the statement made by Pastrick at the top of the footnote. In fact, Panetta understood clearly the first part of the statement, i.e., that every DNC expenditure during a federal campaign is required to have a hard money component. The only thing Panetta did not know was the \$20,000 limit.

f. Page 15, n. 16 The memo quotes Ickes' statement that Strauss was very sophisticated in matters of soft money/hard money, and therefore may have written notes of greater detail than actually discussed. However, the memo does not mention Strauss' own statement (reflected in agents' notes) that he was not familiar with these issues as they pertained to the White House and the DNC. Strauss was adamant that those notations reflected comments made at the meeting.

g. Page 16: The memo says that Gore stated he and the President did not often attend DNC budget meetings like that held on Nov. 21. In fact, the agents report that most witnesses indicated that the President and Vice President generally did attend the DNC budget meetings.

5. The memorandum at least twice refers to the fact that the Vice President might well have left the meeting at the point in which the hard money media fund discussion took place. Not

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only is there no evidence that this occurred (i.e., no witness recalls his leaving) but the agents notes reflect that Ickes told them that when he conducted meetings (and he was conducting the meeting on November 21), he would halt the proceedings if the President or Vice President stepped out of the room; the meeting would resume when they returned. Therefore, rather than presume the Vice President was not present, the presumption must be that he was.

6. The memorandum notes (p. 15, n. 16) Ickes' speculation that Strauss may simply have been penning his own thoughts rather than recording statements made at the meeting. The memorandum does not mention that the Vice President conceded that if the statement were in the Strauss notes he presumes the statement was made; he simply has no recollection of it.

7. The agents disagree vehemently with the characterization of the Panetta interviews as set forth on pp. 20-21. Specifically, they assert that he did not change his statement, although the memo says he did so three times. He began his interview, as did all the witnesses, stating he had no specific recollection of the meeting. In both interviews he indicated that there was a discussion at the Nov. 21 meeting concerning the hard and soft components of the media fund. His recollection was not derived solely from the Ickes memorandum, although the Ickes memorandum supported his recollection.

On behalf of both Chuck and myself, we have some observations on the overall inquiry¹:

As the memo recognizes, there are two separate questions to be resolved, one involving 607 and the other involving 1001. To some extent of course they are intertwined. As to the 607, given a policy of non-prosecution absent aggravating circumstances, the question is whether the information we now have presents any aggravating circumstance. Certainly a possible false statement on the issue could be seen as such. Therefore, unless we can dismiss absolutely the claim that there was a false statement, the 607 issue at least must be considered.

In sum, we think given the new evidence i.e., Marshall, Panetta and the Strauss contemporaneous notes, along with some preexisting evidence, including the Vice President's press conference, his use of the Clinton/Gore credit card, and the incredibility of his claim not to recall memos sent to him and topics discussed in his presence, it is impossible to close out this case. Given the failing recollection of so many witnesses, at the very least one would want to put into the grand jury several of these witnesses before closing out an investigation. A grand jury appearance under oath may well jog one's vague recollections as recounted in a voluntary interview. Grand jury is not an option during this stage of the investigation, but would be if this were turned over to an independent counsel.

¹ Both Jim De Sarno and Jeff Lampinski are out of town today and could not weigh on this. Therefore, the limitation of the concluding portion of the memo is not meant to indicate that the FBI would not be in agreement if Jim and/or Jeff were available. We simply do not know and therefore do not include them in this final portion.

There is a sense we all share that at the end of the day the facts involving the Vice President's calls and statements would not warrant prosecution. But that is not the question we face at this point. The question we now face is whether further inquiry is warranted on both 607 and 1001. The answer we believe is yes.

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